IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 63 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

GOPI PRAHLADBHAI SALAT

Appearance:
Mr. Kamal M. Mehta, A.P.P. for Petitioner
MR KR RAVAL, appointed for Respondent No. 1

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE J.R.VORA

Date of decision: 13/02/98

ORAL JUDGEMENT

The State of Gujarat has filed this appeal under Section 378 of the Code of Criminal Procedure,1973 ("Code" for short) against the order of acquittal under Section 302 of the Indian Penal Code in Sessions Case no.100/95 passed by the learned Sessions Judge, Mehsana

on 21st October, 1995. The learned Sessions Judge held accused guilty of an offence under Section 304 Part II of the Indian Penal Code and awarded rigorous imprisonment for five years and fine of Rs.500, in default, S.I. for three months. The respondent-accused ("accused" for short) has not challenged the said order of conviction under Section 304 Part II of the Indian Penal Code.

Facts leading to the prosecution of the accused briefly stated are as under:

Deceased Janaji and his brother Shivaji complainant herein were running a tea stall near Gopinala Mehsana. The accused was employed on that stall some ten years before as a tea server. As accused was to marry he had borrowed Rs.15,000/- or so from the deceased. Since last three years accused was not reporting for duty and was loitering. He was also not repaying the amount of loan received. The deceased was attending his tea stall on 1st March, 1995. At that time. brother of deceased Shivaji Chandaji PW 2, Kalaji Jenaji customer PW 3 and their employee Chotubhai PW 4 were present at the stall. The accused was seen by the deceased when he was passing near Ranjit Pan Centre situated just opposite to that tea stall. The deceased demanded money from him and the accused therefore ran towards the garden. The deceased chased him towards the garden to catch him. When they reached the garden the accused took out a knife and inflicted a blow on the chest of the deceased who immediately raised shout and fell down. By that time PWs 2, 3 and 4 had reached there. The accused ran away with knife from that place. The deceased was brought in unconscious condition to Mehsana Civil Hospital where he was declared dead by the Doctor. Police Inspector received telephonic information from the Constable on duty in the hospital that Jenaji Chandanji Thakore tea stall owner of Gopinala, Mehsana is injured in scuffle and has died when he was brought to the hospital. This information was received by P.I. Shivnathsing PW 9 who immediately went to Civil Hospital. He then recorded the complaint of the brother of the deceased PW 2. He sent that complaint to the Police Station to register offence. Offence was registered against the accused. Investigation was carried out and on completion of the investigation chargesheet was submitted against the accused before the learned Judicial Magistrate, First Class, at Mehsana who in his turn committed the case to the Court of Sessions for trial.

The learned Sessions Judge framed charge against the accused under Section 302 of the Indian Penal Code

and Section 135 of the Bombay Police Act. The accused pleaded not guilty and claimed to be tried. The prosecution led necessary evidence to prove the charge levelled against the accused. On completion of the evidence for prosecution further statement of the accused under Section 313 of the Code was recorded. From the said statement, it appears that the defence of the accused is of total denial. He has not come out with any alternative case also. After the further statement was recorded and the accused have led no evidence for defence, learned A.P.P. and the defence Advocate were heard and after hearing the learned Advocates, the learned Sessions Judge held the accused guilty of an offence under Section 304 Part II of the Indian Penal Code and Section 135 and acquitted the accused of the charge under Section 302 of the Indian Penal Code.

On a proper reading of Section 386 read with Section 378 it will be necessary for the appellant to satisfy the Court that the conclusion of guilt of the accused arrived at by the learned Sessions Judge is proper. The learned Sessions Judge in the instant case has acquitted the accused of an offence punishable under Section 302,IPC. Powers of the Appellate Court are provided in Section 386 of the Code. The relevant part for our purpose is as under:

"386. Powers of the Appellate Court.- After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial as the case may be, or find him guilty and pass sentence on him according to law.

Therefore, it will be necessary for the appellant to satisfy the Court that the conclusion of guilt arrived at by the learned Sessions Judge is just and proper. If the learned Advocate for the appellant satisfies the Court then the question will arise as to within which provision of the Penal Code the offence from the facts proved is committed.

The learned A.P.P. Mr. Kamal Mehta took us through the evidence of three witnesses, namely, PWs 2, 3

and 4 of which according to him only PW 3 is an independent witness as PW 2 is the brother of the deceased and PW 4 is an employee of the deceased. PW 2 in his evidence has stated that Ranjit Pan Galla is located opposite his Lari. The accused was passing from there. My brother saw him and my brother therefore called him and made a demand for money. The accused escaped from the hand of my brother and ran. My deceased brother also ran behind him. They went to the garden. As my brother did not return within two to three minutes, I went to search him in company of Chota Lalu and Kodaji PW 4 and PW 3 respectively. In the garden the accused inflicted knife blow on the chest of my brother. We, therefore, immediately took my brother in a rickshaw. The accused ran away from there with knife We brought my brother to Civil Hospital in rickshaw where Doctor declared him dead. Suggestion in the cross examination that this witness was neither present nor has he seen the incident is denied. It is also denied that money was not lent to Gopi and he has not seen Gopi inflicting knife blow. Some suggestions are made about the character of the deceased. They are to the effect that he was involved in a dacoity at a petrol pump. He was involved in robbery of a liquor truck. In our opinion, even if deceased is of the said character, it has nothing to do with the present case nor does it affect the evidence of PW 2 in any way. Based on the character of the deceased it is not the suggestion of the defence that he has many enemies who would have inflicted such injury. From the evidence of PW 2, the fact that emerges is that from Pan Galla the accused escaped from the deceased and ran towards the garden. The deceased ran after him. They both went to the garden and PW 2 saw the accused inflicting knife blow on the chest portion of the deceased. This evidence of PW 2 in our opinion is a natural one. Presence of this witness at his Galla is also a natural one as it is not disputed that PW 2 and his brother were running the tea stall.

The evidence of this witness is corroborated by evidence of PW 3 Kodaji. PW 3 has stated: " I had gone to the tea stall of complainant in the morning at about 11.15 on the day of incident. At that time Jenaji, his son, brother Shiva and their employee Chotu and another boy were there at the tea stall. While I was standing at the tea stall accused Gopi just passed near the Pan Galla on the opposite side. Jenaji therefore called him." The deceased inquired from the accused as to what he had done about his money. Gopi passed away from there without giving any reply. Gopi went towards the garden. Jenaji also went after him. After some time we went into the

garden after Jenaji. Before we reached knife blow was inflicted. Knife was taken out by the accused in our presence. The accused then ran away. Jenaji had fallen down. The evidence of this witness is challenged on the ground that he is also a man of very bad reputation. Allegation is made against him that he is facing a criminal case of inflicting knife blow on one Joshi. That there is a quarrel with owner of Larry no.13 about money lending. Attempt is made to show that he was on duty at the relevant time. In our opinion, this character of the witness has nothing to do with the incident and appreciation of his evidence. So far as his presence at the scene of offence is concerned, no further attempt is made to show that he was on duty at the relevant time. Assuming for the sake of argument that he was on duty, meaning thereby, that his office was working that does mean not that he could not have left office and remained present for tea at the tea stall. In our opinion, he corroborates on material points the evidence of PW 2.

The evidence of these two witnesses, namely PW 2 and 3 is further corroborated by evidence of PW 4 Chotu an employee of the deceased. He has specifically stated that when we reached the garden accused inflicted knife blow on deceased and seeing us he ran away. An attempt is made to show that this witness is deposing because he has borrowed money from the deceased. He has denied the suggestion that when they reached the garden behind Jenaji, Jenaji had already fallen down.

All these three witnesses have stated that their clothes were bloodstained. This part of the evidence is not challenged in the cross examination. Unfortunately, police has not seized the clothes of these witnesses.

Suggestion is made that when Jenaji chased accused and when both reached the garden there was scuffle between the two. The question is whether there was scuffle before knife blow was inflicted. To show that there was scuffle, learned Advocate for the defence Mr. Raval has relied on the statement in Inquest Panchnama as well as discovery Panchnama. In Inquest Panchnama it is stated that police received information by telephone from Hospital Duty Constable that Thakore Jenaji Chandaji is injured in scuffle. It is also stated in discovery Panchnama but that statement is by the accused and in our opinion it will not be admissible in evidence. Therefore that part cannot be read into. Statement in Inquest Panchnama is by a Constable on duty to whom it is not known who informed that there was

scuffle. To our utter surprise when the defence comes out with a say that there was scuffle and a blow was inflicted on the deceased, yet there is no suggestion to any any of the witnesses, namely, P Ws 2, 3 and 4 in cross examination that there was scuffle prior to the occurrence of the incident. Even there is no suggestion to the Panch witness that there were signs of scuffle at the scene of offence. Therefore, the story advanced or suggestion made that there was scuffle and simply there was reference about scuffle in Inquest Panchnama does not make or allow us to hold that there was scuffle. Therefore, the theory advanced by the defence that there was scuffle is not acceptable and is not warranted by any evidence on record. Unfortunately the defence from the very beginning is of total denial. In view of the evidence of P Ws 2, 3 and 4 as discussed above, we are of the opinion that the learned Sessions Judge has rightly come to the conclusion that a knife blow is inflicted by the accused on the deceased. It is not only one injury but there are also other injuries on the person of the deceased.

From the postmortem notes, it is clear in column no.17 that there are as many as five external injuries. They are as under:

1. Stab wound size 5 cm x 1 1/2 cm cavity deep on lt.side of chest 3 cm lateral to midline in the 6th intercostal space obliquely placed wedge shaped(acute angle pointing to lower part and blunt upper) wound is directed to posterio-laterally blood clotted on margin.

2. Incised wound size 2.5 cm. x 1.25 cm skin deep on rt. side of chest just below and 1 cm lateral to areota oblique clotted blood at the margin.

3. Incised wound 5 cm x 1/2 cm skin deep on left palm surface extending from thumb to index finger blood clotted at edges.

4. Incised wound 2 cm x 1/2 cm muscle deep on lt. arm middle 1/3rd medially blood clotted at the edge.

5. Incised wound 4 cm. x 1/2 cm skin deep on rt. arm lower 1/3rd and oblique blood clotted at the edge.

The internal injuries recorded in PM note are as under:

5th and 6th costal cartilages partially cut.

Pericardium cut on rt. side overlying rt ventricle. Free fluid blood about 2 1/2 times on thoracic cavity.

Right ventricle cut on lower part (and lateral surface) (Rt. through and through size 3 cm x 1 cm.

Cause of death shown is shock due to internal haemorrhage due to injury to the heart.

The Doctor has stated that external injury no.1 is of a serious nature and it was such which would cause death of a person in the ordinary course of nature. He has also further stated that the heart portion is cut. Therefore, the blow must have been given with full force and therefore there is cut of layer of the heart. Other injuries nos.3,4 and 5 are on left hand palm, right hand shoulder in the middle and right hand shoulder lower part respectively. There is other injury no.2 skin deep just below nipple of the right side of the chest. According to the Doctor, the injuries can be caused by a weapon like knife. Learned Advocate Mr. Raval has contended that prosecution has failed to prove recovery of knife in accordance with law. In our opinion, when in view of the eye witness injury is caused by knife whether knife is found or not has no significance. Therefore, we do not detain ourselves in replying to the contention of Mr. Raval as to whether the recovery of knife is proved by the prosecution or not. It was also contended by Mr. Raval that in Inquest Report there were only three injuries while in the postmortem note there are as many as five injuries noted by the Doctor. If one reads the Inquest Panchnama properly then this confusion stands solved. In Inquest Panchnama injuries are referred as under:

On opening the buttons of the bush shirt put on one deep blow on the left side of the chest by edged weapon is seen.....On the right side of the chest below the nipple one blow of the size of 1" x 1/2" is seen....On the left hand palm there is an injury on the first finger. Clothes of the deceased were not removed. Other two injuries noted by the Doctor in PM Note are on the shoulder bone which in our opinion would have been covered under the shirt. Panchas of Inquest report have not removed the shirt or the clothes on the body fully and seen whether there are any injuries or not.

Therefore, in our opinion, the said two injuries which are noted in postmortem note if not referred to in Inquest Panchnama does not damage the case of the prosecution.

Now, the question is whether the conclusion reached by the learned Sessions Judge that in view of the above facts, the case of the accused falls within the purview of Section 304 Part II is correct or not?. The learned A.P.P. Mr. Kamal Mehta, relying on the decision in the case of Virsa Singh v. State of Punjab (AIR 1958 SC 465) and also on the judgment in the case of State of Karnataka vs. Vedanayagam 1995(1) SCC 326 contends that the case of the accused squarely falls within Clause (3) of Section 300 of the Indian Penal Code. Mr. Mehta contended that Clause (3) of Section 300 does not require to prove intention to kill but it contemplates for intention of causing bodily injury and that injury if caused is sufficient in the ordinary course of nature to cause death. Mr. Mehta contended that in the instant case, giving of a blow with a knife on a person cannot be with a purpose or intention other than causing injury to the person and if that blow which was intended causes injury which is sufficient in the ordinary course of nature to cause death,Clause (3) of Section 300 of the IPC comes into play. Mr. Raval appearing for the accused contends that there was no intention to kill. There was no premeditation. The accused has given the blow on an apprehension that the deceased may kill him as it is in evidence that the deceased chased him when he got himself relieved from his hold. Mr. Raval further contended that it is only one blow which has become fatal. Mr. Raval contended that all this has been accidental as neither the accused had expected that the deceased may call him and demand money, catch hold of him, he may escape and he be chased nor deceased would have expected to come there at the relevant time, but the fact remains that the accused was chased by the deceased and when they reached in the garden something went wrong and the deceased is found injured. In view of these facts, Mr. Raval contended that by no stretch of imagination it can be said that accused had an intention to cause death or inflict an injury on the person of the deceased to cause death. The answer to these questions in our opinion is rightly given by the Supreme Court in Virsa Singh's case. It will be appropriate first to refer to Para 16 of that judgment where a Bombay Judgement is referred to, discussed and reversed. Facts of the Bombay case appears to be identical with the facts of the present case. Para 16 reads as under:

"16. The learned counsel for the appellant

referred us to Emperor v. Sardharkhan Jaridkhan, ILR 41 Bom 27 at p.29: (AIR 1916 Bom 191 at p.192) (B) where Beaman J., says that:

"where death is caused by a single blow, it is always much more difficult to be absolutely certain what degree of bodily injury the offender intended."

With due respect to the learned Judge he has linked up the intent required with the seriousness of the injury, and that, as we have shown, is not what the section requires. The two matters are quite separate and distinct, though the evidence about them may sometimes overlap. The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, ofcourse, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question."

Keeping in mind that observation we will refer to Paras 9 to 15 which reads as under:

" 9. This is a favourite argument in this kind of case but it is fallacious. If there is an intention to inflict an injury that is sufficient to cause death in the ordinary course of nature, then the intention is to kill and in that event, the " thirdly" would be unnecessary because the act would fall under the first part of the section, namely,-

"If the act by which the death is caused is done with the intention of causing death."

In our opinion, the two clauses are disjunctive and separate. The first is subjective to the offender:

"If it is done with the intention of causing bodily injury to any person.

It must, of course, first be found that bodily injury was caused and the nature of the injury must be established, that is to say, whether the injury is on the leg or the arm or the stomach, how deep it penetrated, whether any vital organs were cut and so forth. These are purely objective facts and leave no room for inference or deduction: to that extent the enquiry is objective; but when it comes to the question of intention, that is subjective to the offender and it must be proved that he had an intention to cause the bodily injury that is found to be present.

"10. Once that is found, the enquiry shifts to the next clause:-

"and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death."

The first part of this is descriptive of the earlier part of the section, namely, the infliction of bodily injury with the intention to inflict it that is to say, if the circumstances justify an inference that a man's intention was only to inflict a blow on the lower part of the leg, or some lesser blow, and it can be shown that the blow landed in the region of the heart by accident, then, though an injury to the heart is shown to be present, the intention to inflict an injury in that region, or of that nature, is not proved. In that case, the first part of the clause does not come into play but once it is proved that there was an intention to inflict the injury that is found to be present, then the earlier part of the clause we are now examining-

"and the bodily injury intended to be inflicted."

is merely descriptive. All it means is that it is not enough to prove that the injury found to be present is sufficient to cause death in the ordinary course of nature; it must in addition be shown that the injury is of the kind that falls within the earlier clause, namely, that the injury found to be present was the injury that was intended to be inflicted. Whether it was sufficient to cause death in the ordinary course of nature is a

matter of inference or deduction from the proved facts about the nature of the injury and has nothing to do with the question of intention.

"11. In considering whether the intention was to inflict the injury found to have been inflicted the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on commonsense: the kind of enquiry that "twelve good men and true" could readily appreciate and understand.

"12. To put it shortly, the prosecution must prove the following facts before it can bring a case under S. 300 " thirdly";

First it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

"13. Once these four elements are established by the prosecution and, of course, the burden is on the prosecution throughout), the offence is murder under S.

300 " thirdly". It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature(not that there is any real distinction between the two). It does not even mater that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death . No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.

"14. We were referred to a decision of Lord Goddard in R. v. Steane 1947-1 All ER 813 at p.816 (A) where the learned Chief Justice says that where a particular intent must be laid and charged, that particular intent must be proved. Of course it must, and of course it must be proved by the prosecution. The only question here is, what is the extent and nature of the intent that S. 300 " thirdly" requires and how is it to be proved?

"15. The learned Counsel for the appellant next relied on a passage where the learned Chief Justice says that:

"if, on the totality of the evidence, there is room for more than one view as to the intent of the prisoner, the jury should be directed that it is for the prosecution to prove the intent to the jury's satisfaction, and if, on a review of the whole evidence, they either think that the intent did not exist or they are left in doubt as to the intent, the prisoner is entitled to be acquitted."

We agree that this is also the law in India. But so is this. We quote a few sentences earlier from the same learned judgment:

" No doubt, if the prosecution prove an act the natural consequences of which would be a certain result and no evidence or explanation is given, then a jury may, on a proper direction, find that the prisoner is guilty of doing the act with the intent alleged."

That is exactly the position here. No evidence or explanation is given about why the appellant thrust a spear into the abdomen of the deceased with such force that it penetrated the bowels and three coils of the intestines came out of the wound and that digested food oozed out from the cuts in three places. In the absence of evidence or reasonable explanation, that the prisoner did not intend to stab in the stomach with a degree of force sufficient to penetrate that far into the body, or to indicate that his act was a regrettable accident and that he intended otherwise, it would be perverse to conclude that he did not intend to inflict the injury that he did. Once that intent is established (and no other conclusion is reasonably possible in this case, and in any case it is a question of fact), the rest is a matter for objective determination from the medical and other evidence about the nature and seriousness of the injury."

This judgment in Virsa Singh's case is further approved by the Supreme Court in the case of State of Karnataka Vs. Vedanayagam 1995(1) SCC 326. The Supreme Court in Vednayagam's case has held as under:

"Thus, it is clear that ingredient of clause 3rdly is not the intention to cause death but on the other hand the ingredient to be proved is the intention to cause the particular injury that was present. It is fallacious to contend that wherever there is a single injury only a case of culpable homicide is made out irrespective of other circumstances.

Mr. Raval for the defence has relied on the judgment in the case of Hem Raj v. The State (Delhi Administration) 1990 SC 2252 wherein the relevant paras 13 and 14 reads as under:

"13. In our considered view, a true and accurate version of the prosecution as to the origin and genesis of the occurrence is not brought out clearly. Nonetheless, it is inferable from the circumstances that the occurrence had happened in a spur of moment and in the heat of passion upon a sudden quarrel. The above inference is fortified by the admission of PW-17 admitting that both the appellants and the deceased suddenly grappled each other and the entire occurrence was over within a minute. Thus, it is clear that it was during the course of the sudden quarrel the appellant gave a single stab which unfortunately landed on the chest of the deceased causing an injury which in the

opinion of the Medical Officer was sufficient in the ordinary course of nature to cause death."

"14. The question is whether the appellant could be said to have caused that particular injury with the intention of causing death of the deceased. As the totality of the established facts and circumstances do show that the occurrence had happened most unexpectedly in a sudden quarrel and without pre-meditation during the course of which the appellant caused a solitary injury, he could not be imputed with the intention to cause death of the deceased or with the intention to cause that particular fatal injury, but he could be imputed with the knowledge that he was likely to cause an injury which was likely to cause death. Because in the absence of any positive proof that the appellant caused the death of the deceased with the intention of causing death or intentionally inflicted that particular injury which in the ordinary course of nature was sufficient to cause death, neither Clause I nor Clause III of S.300, IPC will be attracted. We are supported in this view by a series of decisions of this Court, namely (1) Jagrup Singh v. State of Haryana(1981) 3 SCC 616:(AIR 1981 SC 1552), (2) Kulwant Rai v. State of Punjab (1981) 4 SCC 245:(AIR 1982 SC 126), (3) Randhir Singh v. State of Punjab (1981) 4 SCC 484 :(AIR 1982 SC 55), (4) Gurmail Singh v. State of Punjab (1982) 3 SCC 185: (AIR 1982 SC 1466) and (5) Jagtar Singh v. State of Punjab (1983) 2 SCC 342: (AIR 1983 SC 463). Following the ration of the aforementioned decisions, we hold in the present case that the offence committed by the appellant is the one punishable under S.304, Part II, IPC, but not under Section 302, IPC.

The answer to this judgment is given by the Supreme Court in the case of Vednayagam(Supra)) referred to above. The judgment in the case of Hem Raj (Supra) is per incuriam. The cases relied on in the case of Vednayagam were not brought to the notice of the Supreme Court in the case of Hem Raj (Supra). There was sudden quarrel and in heat of passion and spur of moment occurrence took place. That does not appear to be so in the instant case.

Bearing in mind the judgment in the case of Virsa Singh what is required to be proved by the prosecution to show that the case falls within Clause thirdly of Section 300 of the Indian Penal Code is (i) that bodily injury is present, (ii) that the nature of injury must be proved, (iii) that there was an intention to inflict that particular bodily injury i.e. to say that it was not

accidental or unintentional or that some other kind of injury was intended and (iv) that the injury is sufficient to cause death in the ordinary course of nature. In the instant case, through the evidence of Doctor external injury no.1 is proved by the prosecution. According to the Doctor's evidence, the said injury is a grievous one. There is nothing on record to show that the said injury at a particular site was not intended and it was intended or aimed at some other place and or the injury intended was of some other nature. It is also proved through the evidence of Doctor PW 1 that the injury was sufficient in the ordinary course of nature to cause death. There is nothing on record to show or there are no circumstances on record to infer that accused intended at a site other than one inflicted on the deceased. Thus case of the accused as proved falls squarely within Clause 3 of Section 300 of the Indian Penal Code.

The learned Sessions Judge has erred in holding that the accused has committed offence under Section 304 Part II of the Indian Penal Code. The learned Sessions Judge has misdirected himself even on the facts of the case. The learned Sessions Judge has observed in the judgment that on carefully reading the evidence of Doctor, injury no.1 is a serious one. Doctor has specifically stated according to the learned Judge that by such injury death cannot be instantaneous. As the death cannot be instantaneous, the learned Judge has held that it cannot be said that there was an intention to cause death. The learned Sessions Judge is also guided by the fact of relationship of deceased and the accused. The accused was treating the deceased as father and was staying with him since childhood. From this fact also it cannot be inferred that he had intention to cause death. The learned Sessions Judge has further observed that it is possible that there may be a scuffle between the deceased and the accused. In our opinion, all these observations of the learned Sessions Judge are not warranted not only by fact but by record also.

In the result, there is no doubt whatsoever that the accused intended to cause that particular injury on the chest which necessarily proved fatal and Clause thirdly of Section 300 of the Indian Penal Code is clearly attracted. The learned Sessions Judge erred in holding that the accused did not intend to cause his death by inflicting injury on the chest because there was no premeditation and therefore the offence would be culpable homicide. This view of the learned Sessions Judge is not correct.

For all these reasons we set aside the judgment of the learned Sessions Judge and convict the accused respondent under Section 302 of the Indian Penal Code and sentence him to undergo imprisonment for life. The appeal is allowed accordingly.

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